

**UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
Norfolk Division**

CSX TRANSPORTATION, INC.,	)	
	)	
	)	
<i>Plaintiff,</i>	)	
	)	
v.	)	
	)	
NORFOLK SOUTHERN RAILWAY	)	
COMPANY, <i>et al.</i> ,	)	Case No. 2:18-cv-530
	)	
<i>Defendants.</i>	)	

**MEMORANDUM IN SUPPORT OF  
DEFENDANT NORFOLK SOUTHERN RAILWAY COMPANY'S  
MOTION TO FILE DOCUMENTS UNDER SEAL**

Defendant Norfolk Southern Railway Company ("NS"), by counsel, states as follows in support of its Motion to File Documents Under Seal. NS seeks to file the following documents under seal: Defendants' Consolidated Reply in Support of Their Objections to the Denial of Their Motions to Exclude the Opinions of Prof. Howard P. Marvel.

1. On October 29, 2019, the Court entered a Stipulated Protective Order, which governs the parties' use of confidential information produced in this case. ECF No. 79.

2. Paragraph 2 of the Stipulated Protective Order defines "Protected Material" as material containing information that "must or may be protected from disclosure," including material designated "CONFIDENTIAL" and "CONFIDENTIAL – ATTORNEYS' EYES ONLY." ECF No. 79, ¶ 2; *see also* 49 U.S.C. § 11904 (requiring confidentiality of certain railroad information).

3. Defendants' Consolidated Reply in Support of Their Objections to the Denial of Their Motions to Exclude the Opinions of Prof. Howard P. Marvel, contains and/or references

information that NS, Norfolk and Portsmouth Belt Line Railroad Company (collectively with NS, “Defendants”), Plaintiff CSX Transportation, Inc. (“CSX”), and/or third parties have indicated is “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL,” or “CONFIDENTIAL – ATTORNEYS’ EYES ONLY” under the Stipulated Protective Order entered in this matter. ECF No. 79.

4. The Stipulated Protective Order requires NS to file this document under seal. ECF No. 79, ¶ 16.

For the foregoing reasons, NS requests that the Court enter the proposed order attached to the Motion to Seal as **Exhibit A** authorizing and directing NS to file Defendants’ Consolidated Reply in Support of Their Objections to the Denial of Their Motions to Exclude the Opinions of Prof. Howard P. Marvel, under seal, and directing the Clerk of Court to maintain such document under seal pending further order of the Court.

NS also files herewith a Notice of Sealing Motion as required by Local Rule 5(C). NS waives oral argument on this Motion.

Dated: February 13, 2023

Respectfully submitted,

**NORFOLK SOUTHERN RAILWAY  
COMPANY**

/s/ Michael E. Lacy

Alan D. Wingfield (VSB No. 27489)  
Michael E. Lacy (VSB No. 48477)  
Massie P. Cooper (VSB No. 82510)  
TROUTMAN PEPPER HAMILTON SANDERS LLP  
1001 Haxall Point  
Richmond, Virginia 23219  
Telephone: (804) 697-1200  
Facsimile: (804) 698-6061  
Email: alan.wingfield@troutman.com  
Email: michael.lacy@troutman.com  
Email: massie.cooper@troutman.com

John C. Lynch (VSB No. 39267)  
Kathleen M. Knudsen (VSB No. 90845)  
TROUTMAN PEPPER HAMILTON SANDERS LLP  
222 Central Park Avenue, Suite 2000  
Virginia Beach, VA 23462  
Telephone: (757) 687-7500  
Facsimile: (757) 687-7510  
Email: john.lynch@troutman.com  
Email: kathleen.knudsen@troutman.com

Tara L. Reinhart  
Thomas R. Gentry  
SKADDEN, ARPS, SLATE,  
MEAGHER & FLOM LLP  
1440 New York Avenue, N.W.  
Washington, DC 20005  
Telephone: (202) 371-7000  
tara.reinhart@skadden.com  
thomas.gentry@skadden.com

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